

Item LEG03-01 Response Form

Title: Change Timing for Service and Filing of Papers—Amend Code of Civil Procedure Sections 1005, 2024, and 2034

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 P.M Friday, September 12, 2003.

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.

Title	Change Timing for Service and Filing of Papers—Amend Code of Civil Procedure Sections 1005, 2024, and 2034
Summary	Legislation would be sponsored by the Judicial Council to amend Code of Civil Procedure sections 1005, 2024, and 2034 to prescribe different times for the filing and service of motion papers in order to eliminate uncertainty as to the proper times for filing and service.
Source	Civil and Small Claims Advisory Committee
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov Daniel Pone, Senior Attorney, Office of Governmental Affairs, 916-323-3121, daniel.pone@jud.ca.gov
Discussion	<p><i>Code of Civil Procedure section 1005</i></p> <p>There is an uncertainty under current law as to the correct method for calculating the deadlines for the service and filing of motion papers. Oppositions are due 10 calendar days before the hearing and replies are due 5 calendar days before. If the deadline for filing and service falls on a weekend, some take the position that the papers are due the previous Friday whereas others take the position that they are due the next Monday. A similar problem arises if the deadline falls on a holiday.</p> <p>The present scheme of deadlines also permits parties to manipulate the times for service by filing papers on certain days of the week rather than others.</p> <p>To clarify the law on this matter and to reduce gamesmanship, Code of Civil Procedure section 1005 should be amended. The proposed revision of section 1005 would preserve the longer overall time period for civil motions that was added by Assembly Bill 1132 in 1999. However, it would modify the statute to eliminate the uncertainty as to the proper deadlines for filing papers. Specifically, to clarify the deadlines and preserve the longer period for briefing motion, Code of Civil Procedure section 1005 would be modified to provide that all moving and supporting papers would be served and filed at least <i>15 court days</i> before the hearing, all opposition papers at least <i>8 court days</i>, and all reply papers at least <i>5 court days</i> before the hearing.</p> <p>Because of the occurrence of court holidays and combinations of court holidays with weekends, it is not possible to ensure that parties will always have a uniform amount of time between the motion notice,</p>

position, and reply deadlines when calculating these deadlines by counting backward from the motion hearing date. But it is possible to ensure a minimum amount of time by calculating all the motion deadlines using *court days* instead of calendar days, as provided under the current statute.

If court days are used and the reply deadline is moved backward due to intervening non-court days, the opposition and notice deadlines will also move backward, thus ensuring a minimum amount of time between each deadline. If the opposition deadline is moved backward due to non-court days between its due date and the reply due date, the notice due date will also move backward, thus ensuring that there is a minimum amount of time between the filing of the notice and the opposition. Although this will allow for a longer time between the filing of the opposition and the reply, this will ensure that the amount of time between the two acts will never be shorter than the minimum number of days. Finally, if the non-court day falls between the deadline to file the notice of motion and the deadline to file the opposition, the deadline to file the notice will be moved backward, allowing more time between the two deadlines, but never less. Hence, the proposed amendments are practical as well as less confusing than the present statute.

Lastly, to provide the parties with additional time to prepare their papers, the statute should be amended to provide that opposition and reply papers must be served by the close of business on the same day they are filed rather than the next day.

Comments are invited on this proposal and specifically on the time deadlines that are recommended.

Code of Civil Procedure sections 2024 and 2034

Besides the uncertainty regarding the times in Code of Civil Procedure section 1005, there is some uncertainty about the timing of the discovery cut-off date under sections 2024 and 2034. A recent amendment to 2024(a) partially clarified this. But to complete the process, sections 2024(d) and 2034(b) and (c) should also be amended. The amended language would be further clarified by stating that if the last day falls on a Saturday, Sunday, or holiday, the last day should be the "next court day closer to the trial date."

Attachment

Code of Civil Procedure section 1005 would be amended to read:

§ 1005.

(a) Written notice shall be given, as prescribed in subdivisions (b) and (c), for the following motions:

- (1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.
- (2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.
- (3) Notice of Hearing for Claim of Exemption under Section 706.105.
- (4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.
- (5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.
- (6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.
- (7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.
- (8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.
- (9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.
- (10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.
- (11) Motion to expunge Notice of Pendency of Action pursuant to Section 405.30.
- (12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.
- (13) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least ~~21-calendar~~ 15-court days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required ~~21~~ 15 day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required ~~21~~ 15 day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed

shall be filed with the court and a copy served on each party at least ~~10 calendar~~ 8 court days, and all reply papers at least five ~~calendar~~ court days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the ~~next~~ business day ~~after the time on which the~~ opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court or a judge thereof may prescribe a shorter time.

§ 2024.

(a) Except as otherwise provided in this section, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action. If either of these days falls on a Saturday, Sunday, or holiday as specified in Section 10, the last day shall be the next ~~successive~~ court day closer to the trial date. As used in this section, discovery is considered completed on the day a response is due or on the day a deposition begins. Except as provided in subdivision (e), a continuance or postponement of the trial date does not operate to reopen discovery proceedings.

(b) – (c) * * *

(d) Any party shall be entitled as a matter of right to complete discovery proceedings pertaining to a witness identified under Section 2034 on or before the 15th day, and to have motions concerning that discovery heard on or before the 10th day, before the date initially set for the trial of the action. If either of these days falls on a Saturday, Sunday or holiday as specified in Section 10, the last day shall be the next court day closer to the trial date.

(e) – (g) * * *

§ 2034

(a) * * *

(b) Any party may make a demand for an exchange of information concerning expert trial witnesses without leave of court. A party shall make this demand no later than the 10th day after the initial trial date has been set, or 70 days before that trial date, whichever is closer to the trial date. If this days falls on a Saturday, Sunday, or holiday as specified in Section 10, the last day shall be the next court day closer to the trial date.

(c) The specified date of exchange shall be 50 days before the initial trial date, or 20 days after service of the demand, whichever is closer to the trial date, unless the court, on motion and a showing of good cause, orders an earlier or later date of exchange. If this day falls on a Saturday, Sunday, or holiday as specified in Section 10, the last day shall be the next court day closer to the trial date.